

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

<u>Request for Comments on the Procurement</u>)	
<u>of Default Service Power Supply for</u>)	D.T.E. 04-115
<u>Residential and Small Commercial and</u>)	
<u>Industrial Customers</u>)	

INITIAL COMMENTS OF THE CAPE LIGHT COMPACT

The towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the “Compact”), hereby submit the following initial comments on the procurement of default service power supply for residential and small commercial and industrial customers in respect to the Request for Comments of the Department of Telecommunications and Energy (the “Department”) dated December 6, 2004.

THE CAPE LIGHT COMPACT

The Cape Light Compact is a municipal aggregator under G.L. c. 164, § 134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It is organized through a formal Inter-Governmental Agreement (the “Compact Intergovernmental Agreement”) signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A. The Compact’s initial aggregation plan was approved by the Department in D.T.E. 00-47; its current aggregation plan was approved by the Department in D.T.E. 04-32. The Compact

maintains a business office within the Barnstable County offices located at the Superior Courthouse at 3195 Main Street in Barnstable, MA 02630.

The purpose of the Compact, among other things, is to acquire the best market rate for electricity supply and transparent pricing, to provide equal sharing of economic savings based on current electric rates and/or cost-of-service ratemaking approved by the Department and generally to advance the interest of consumers in a competitive electric supply market. Compact Intergovernmental Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation plan which provides electric power supply on an opt-out basis to more than 53,000 customers who are located within the Compact's service territory and would otherwise be served as default service customers.¹ In 2004, the Compact executed a one-year competitive electric supply agreement to begin servicing approximately 197,000 customers in all customer classes on the Cape and Vineyard on an opt-out basis in 2005 (the "2005 Power Supply Program").² Customers formerly served on the Compact pilot began service under the 2005 Power Supply Program in January; all customers will be phased in by the end of March. The Compact is actively pursuing longer-term power supply arrangements for consumers located in its geographical area. The Compact also operates an Energy Efficiency Plan and Residential Conservation Services Program.³

¹ The Department approved the Compact's Pilot Project in DTE 01-63 and extended it in DTE 03-61 until December 31, 2003; more recently, in DTE 03-99, the Department further extended the Pilot until December 31, 2004.

² The Department approved this agreement as part of D.T.E. 04-32.

³ The Department approved the Compact's Energy Efficiency Plan in D.T.E. 00-47C and again in D.T.E. 03-39; the Department approved the Compact's Residential Conservation Service budget in D.T.E. 03-113 and again in D.T.E. 04-103.

COMMENTS

I. THE LEGISLATURE DID NOT INTEND DEFAULT SERVICE TO UNDERMINE THE DEVELOPMENT OF A COMPETITIVE RETAIL MARKET

The Department seeks comments on the advantages and disadvantages of potential changes to default service procurement designed “to ensure that smaller customers achieve the full benefits of the competitive wholesale market.” Request for Comments 2.

The difficulty with this approach is that the legislature never intended default service to be a vehicle for transmitting the benefits of the competitive wholesale market to consumers. In enacting Chapter 164 of the Acts of 1997 (the “Electric Restructuring Act” or “Act”), the legislature clearly intended that *competitive* retail service serve as the vehicle to bring the benefits of the competitive wholesale market to consumers. See, e.g., St. 1997, c. 164 § 1(c) (“ratepayers and the commonwealth will be best served by moving from (i) the regulatory framework extant on July 1, 1997, in which retail electricity service is provided principally by public utility corporations obligated to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to (ii) a framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier”).

With respect to the period following the seven-year standard offer period, the Act established default service merely as a service of last resort for a customer who has failed to select a competitive supplier or whose competitive supplier fails to provide contracted services. G.L. c. 164, §§ 1 (definition of “Default Service”), 1B(b), 1B(d).

In short, any policy change that helps to make default service an attractive long-term arrangement for small customers will only further undermine the development of a competitive retail market for such customers. If the system is not working for such customers, any changes need to be part of a more fundamental discussion as to the premises behind the Act, and may require legislative action, as set forth below.

The six-month periods for procurement of default service for the small customer load, as adopted by the Department in D.T.E. 02-40-B, struck an appropriate balance between price certainty and price efficiency while still leaving room for competitive suppliers to acquire customers by contracting for wholesale supply for longer terms and offering retail customers greater price certainty than that offered through default service. Indeed, the Act itself only allows fixed-price default service offerings to have “rates that remain uniform for periods of *up to* six months.” G.L. c. 164, § 1B(d) (emphasis added). See also D.T.E. 02-40-B at 38-39 (recognizing the six-month limitation imposed by the Act).

If, contrary to legislative intent, the Department does modify default service procurement procedures in a way that is likely to make default service pricing an attractive long-term option to customers, it should recognize the deleterious effect this would have on development of a competitive retail market for small customers and should *simultaneously make corresponding policy changes*, perhaps outside the procurement context, designed to *promote* the development of a competitive retail market for small customers.

II. ANY CHANGE IN DEFAULT SERVICE PROCUREMENT SHOULD BE DESIGNED TO SUPPORT THE CONTINUED SUCCESS OF MUNICIPAL AGGREGATION

The legislature did contemplate that a competitive supplier might have difficulty attracting enough customer load to make it viable to be a competitive supplier in Massachusetts. Indeed, each distribution company's persistent monopoly over retail service within its territory presents a formidable barrier to retail competition where, in a reasonably efficient market, a competitive supplier can match, but not beat, the default service price, much less afford the incremental costs of customer acquisition. One laudable provision of the Act therefore allows one or more municipalities to aggregate the load of customers within its borders while still allowing a customer freedom to opt out of the power supply program. *See* G.L. c. 164, § 134. A municipal aggregation plan eliminates a distribution company's historic retail service monopoly within the plan territory and effectively eliminates the barrier of customer acquisition for a competitive supplier with a winning bid to supply the aggregated load.

The Compact's nationally recognized success has demonstrated that government aggregation can work to bring competitive supply to small customers in a deregulated market. The Compact's default service pilot program, which served approximately 53,000 customers, has saved these customers approximately \$4.3 million from the program's inception in 2002 through its conclusion on December 31, 2004. Over this time period, less than 1% of customers in the pilot program opted out. In addition, over the entire term of the default service pilot program, the Compact was able to obtain pricing to serve its default service customers which was consistently below the

distribution company's default service price, thereby providing the savings to customers noted above.⁴

The Department should ensure that any changes in default service procurement policy promote, rather than undermine, municipal aggregation in Massachusetts.

If the Department decides to pursue longer term contracts for default service, the Department should promote the stability of a municipal aggregator such as the Compact and guard against market periods when the aggregator's procurement process cannot attract competitive supply bids that are more competitive than those for default service. In order to accomplish this, the Department should allow a municipal aggregator to elect to participate in the applicable distribution company's procurement process. Under such a policy, for example, if the Compact made such an election, Commonwealth Electric Company would be required to conduct a bidding process for its native load and on behalf of the Compact's load, with the Compact then taking its share of the procured supply at cost.⁵

Similarly, in the event that distribution companies are required to conduct or participate in a statewide or other group procurement process, a municipal aggregator should be allowed to participate in that process.

⁴ The Act also provides that a municipal load aggregator can act as an aggregator of energy efficiency services. The importance of this aspect of municipal aggregation should not be overlooked. A municipal aggregator can provide more consumer-oriented energy efficiency services and can better tailor energy efficiency services to suit the circumstances and desires of its citizens. The Compact's experience demonstrates that a municipal aggregator is well-positioned to be a prudent steward of energy efficiency funds and a community-oriented, forward-looking administrator of energy efficiency programs. Additionally, a municipal aggregator does not seek any return and thus more program dollars end up invested in energy efficiency measures. By way of example, the Compact has reached out to the local Housing Assistance Corporation, the organization best positioned to know who in the low income category is in greatest need of funds allocated for that area. The resulting cooperative effort has led to a robust increase in energy efficiency program activity with concomitant savings in energy usage and customer dollars.

⁵ Any such process would need to recognize the unique way in which the Compact delivers retail service to its customers.

To the extent that a change in default service procurement time periods would require a distribution company to procure supply for time periods unequal to those allowed under an existing aggregation plan or related order, the Department should modify any such plan or order to allow the municipal aggregator to do the same.

Finally, any modification to default service procurement procedures should have an effective date that is sufficiently delayed to allow municipal aggregators and competitive suppliers to adjust to a new competitive landscape. Changing the rules mid-stream would be grossly unfair to those players already in the retail market such as municipal aggregators and competitive suppliers.

III. ALTERNATIVE TERMS FOR “DEFAULT SERVICE”

The Department asks whether there is a better or more descriptive term for default service that should be used by distribution companies. The Compact has witnessed confusion among customers who believe that “default service” implies that they themselves are in default with respect to their electric bills. The Compact proposes the following alternative terms: (1) “noncompetitive service” or (2) “last resort service.”⁶

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,

⁶ The Department already uses the descriptive phrase “service of last resort” on its Default Service webpage. See <http://www.mass.gov/dte/restruct/competition/defaultservice.htm>.

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